

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JUSTIN WAYNE PEACOCK,

Plaintiff,

v.

**PERFORMANCE PRESSURE
PUMPING SERVICES, LLC,**

Defendant.

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Civil Action No. 5:15-CV-00901-OLG

**NORTON ROSE FULBRIGHT US LLP’S UNOPPOSED MOTION TO WITHDRAW
AS COUNSEL FOR DEFENDANT**

Counsel for Defendant Performance Pressure Pumping Services, LLC (“Performance”), Shauna Johnson Clark, Heather Sherrod, and Norton Rose Fulbright US LLP (collectively “Performance’s Counsel”), file this Motion to Withdraw as Counsel of Record for Performance and would respectfully show the Court the following:

GROUND FOR WITHDRAWAL

Since undertaking representation for Performance on April 22, 2016 [D.E. 10], Defendant has failed to pay reasonable and necessary attorneys’ fees necessary to continue the litigation and have failed to respond to any of Defendant’s Counsel’s attempts to contact them since June 24, 2016. Declaration of Heather Sherrod at ¶¶3-4, attached as Exhibit A.

BACKGROUND

On May 3, 2016, the Court granted Performance’s Motion to Substitute Shauna Johnson Clark and the law firm of North Rose Fulbright US LLP’s as counsel of record for Performance. [D.E. 12]. Since that time, Performance’s Counsel has performed work on behalf of Performance in connection with the defense of this case, including among other things, (a)

preparing and responding to pleadings in this matter; (b) conducting research regarding relevant legal issues; and (c) preparing other correspondence relating to Performance's defense of Plaintiffs' claims. *Id.* at ¶3. Performance has not paid **any** amount for the costs and attorneys' fees billed for this work. *Id.* On multiple occasions, Performance's Counsel has requested Performance make payment on its account but to no avail.

Since June 24, 2016, Performance's Counsel has attempted to contact Performance and its current owners and principals via e-mail and telephone on at least twelve occasions in order to obtain information and directions with respect to actions to be taken in the case and related cases with no success.¹ *Id.* at ¶4.² Performance's business telephone has been disconnected. *Id.* On October 7, 2016, Performance's Counsel sent letters to Performance through its owners, Tony Broussard and Bill Rigby, via certified mail to their last known addresses, notifying them of Performance's Counsel's intent to end their representation and seek leave to withdraw from the cases unless Broussard, Rigby, or someone else at Performance responded within twenty days. *Id.* at ¶5. Performance has not confirmed receipt or made any effort to respond to the letters. *Id.* As a result, Performance's Counsel has been unable to reach Performance's representatives in order to obtain their signature for this Motion pursuant to Local Rule AT-3. *Id.*

ARGUMENTS & AUTHORITIES

An attorney may withdraw from representation upon leave of court and upon a showing of good cause and reasonable notice to the client. Local Rule AT-3; *In re Wynn*, 889 F.2d 644, 646 (5th Cir. 1989). Non-payment of attorneys' fees and failure to communicate with counsel

¹ Performance's Counsel is filing similar motions to withdraw in two other Fair Labor Standards Act collective actions filed in the Western District of Texas in which it represents Performance and/or its owners and principals: *Newton et al. v. Broussard, Rapattoni, Rigby and Lane*; Civil Action No. 5:16-CV-25-XR, and *Moore v. Performance Pressure Pumping Services, LLC, et al.*; Civil Action No. 5:15-cv-432-RCL.

² Only Performance's former President, Terry Lane, who was discharged by Performance on June 24, 2016 has continued to be responsive to the Performance's Counsel's correspondence and requests for information. *Id.* at ¶4.

constitute good cause for withdrawing as counsel. *See, e.g., Henderson v. Fenwick Protective Inc.*, No. 3:14-CV-505-M, 2015 WL 5165134, at *5 (N.D. Tex. Sept. 2, 2015) (noting that defense counsel was permitted to withdraw because the defendant failed to communicate with them); *Mapfre Tepeyac, SA v. Robbins Motor Transp., Inc.*, 2006 U.S. Dist. LEXIS 90000, at *25-26 (S.D. Tex. Dec. 13, 2006) (stating that “the court will not force counsel to continue representing [Defendant] without compensation”); TEX. DISCIPLINARY R. PROF’L CONDUCT 1.15(b)(5) (listing nonpayment of attorneys’ fees as possible grounds for withdrawal). The withdrawal of an attorney in a given case is a matter entrusted to the sound discretion of the court and will be overturned on appeal only for an abuse of that discretion. *Wynn*, 889 F.2d at 646; *Broughten v. Voss*, 634 F.2d 880, 882-883 (5th Cir. 1981).

Performance has wholly failed to fulfill its obligation to its counsel in this matter, namely its obligations to (1) timely respond and provide any facts and documents that are or might be material or that Performance’s Counsel may request; (2) to keep Performance’s Counsel apprised on a timely basis of all developments relating to Performance’s Counsel’s representation in the matter; (3) attend meetings, conferences, and other proceedings when it is reasonable to do so; and (4) its obligation to pay Performance’s Counsel’s attorneys’ fees as agreed by Performance in its engagement letter agreement with Performance’s Counsel. *Id.* at ¶5. Because Performance and its owners and principals have failed to comply with these obligations, Performance’s Counsel is unable to effectively represent the Company in this case and related cases. Accordingly, Performance’s Counsel respectfully request to withdraw as counsel of record for Performance.

PERFORMANCE' LAST KNOWN CONTACT INFORMATION

In accordance with Local Rule AT-3, the last known contact information for Performance and its representatives is:

Performance Pressure Pumping Services, LLC
5320 Gorman Rd.
Beaumont, TX 77705
Telephone: 409-980-8188

Performance Pressure Pumping Services, LLC
c/o Antoine Broussard
4825 Elmwood Ln
Beaumont, TX 77706

Performance Pressure Pumping Services, LLC
c/o William Rigby
100 Tanglewood Dr.
Bridge City, TX 77611

CONCLUSION

Shauna Johnson Clark, Heather Sherrod, and Norton Rose Fulbright US LLP respectfully request that this Court permit them to immediately withdraw from representing Defendant Performance Pressure Pumping Services, LLC in this case. Shauna Johnson Clark, Heather Sherrod, and Norton Rose Fulbright US LLP further request all such other and further relief to which they may be entitled, either at law or in equity.

Dated: November 14, 2016

Respectfully submitted,

/s/ Shauna Johnson Clark

Shauna Johnson Clark
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**Counsel for Performance Performance
Pressure Pumping Services, LLC**

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2016, a true and correct copy of the foregoing instrument was served upon counsel for Plaintiffs through the Court's ECF service system or as indicated below.

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/s/ Heather Sherrod
Heather Sherrod

CERTIFICATE OF CONFERENCE

I hereby certify that on November 7, 2016, I spoke with counsel for Plaintiff, Don Foty, via telephone and he indicated that he is unopposed to the relief requested in this Motion.

/s/ Heather Sherrod

Heather Sherrod